REMARKS

Claims 1 to 15 and 31 to 46 remain pending. Claims 17 to 30 have been cancelled.

Claim 32 has been objected to under 37 C.F. R. 1.75(c) as being in improper dependent form for failure to further limit the subject matter of a previous claim.

The objection to claim 32 under 37 C.F. R. 1.75(c) is overcome in view of the amendment to the claim.

Claims 1 and 2 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,660,840 to Pruett (the Pruett patent) for reasons set forth in the previous Office Action of May 6, 2003 (Previous Action). The Previous Action stated that Pruett patent disclosed a cosmetic composition having 50 percent coconut milk. The present Office Action of February 13, 2004 (Present Action) states that coconut water is the same as coconut milk in view of prior art teachings in U.S. Published Application No. 2002/068326 A1 in paragraph [0008] (the Lore Application).

The rejection of claims 1 and 2 under 35 U.S.C. 102(b) over the Pruett patent is not well taken. The Pruett patent does not disclose coconut water. Coconut water is the liquid present in the hollow interior of young coconut seeds and is utilized by the coconut seeds for growth. On the other hand, coconut milk is the liquid expressed in the pulp of the coconut fruit. The teachings of the Lore Application are incorrect in this regard. In the

attached 1.132 Declaration, Dr. Prakash G. Kadkade states that the use of the term "coconut milk" in the Lore Application to describe the liquid inside the coconut seed is incorrect. Accordingly, it is maintained that claims 1 and 2 are novel in view of the teachings of the Pruett patent.

Claims 1 to 5, 14, and 15 have been rejected under 35 U.S.C. 103(a) as obvious in view of '840 (the Pruett patent) for reasons set forth in the Previous Action.

The rejection of claims 1 to 5, 14, and 15 under 35 U.S.C. 103(a) in view of the Pruett patent is not well taken. The Pruett patent does not disclose coconut water as discussed above in the rejection under 35 U.S.C. 103(b).

Claims 1 to 7, 14, and 15 have been rejected under 35 U.S.C. 103(a) as being anticipated by U.S. Patent No. 5,910,308 to D'Jang (the D'Jang patent) for reasons set forth in the Previous Action. The Previous Action stated that the D'Jang patent disclosed a cosmetic composition having 10 to 30 percent *Gynostemma*. The Present Action states that Applicant previously argued that the D'Jang patent does not teach *Gynostemma* in the claimed amount. The Present Action further states that one of ordinary skill in the art would have optimized the amount of each ingredient. The Present Action further states that Applicant argued that the claimed amount of *Gynostemma* produced unexpected effects. The Present Action further states that the Applicant has not demonstrated any unexpected effects.

The rejection of claims 1 to 7, 14, and 15 under 35 U.S.C. 103(a) over the D'Jang patent is not well taken because independent claim 1 requires coconut water. The D'Jang patent does not disclose a skin composition having coconut water. Further, the reasons for rejection in the Present Action regarding claimed amounts of *Gynostemma* are irrelevant since claims 1 to 7, 14, and 15 no longer require *Gynostemma*. References to *Gynostemma* were previously deleted from independent claim 1 in the Amendment dated November 6, 2003.

Claims 1 to 9, 11 to 15, and 31 to 46 have been rejected under 35 U.S.C. 103(a) as being obvious in view of US '308 (the D'Jang patent), JP '729, US '840 (the Pruett patent), and JP '498 for the reasons set forth in the Previous Action. The Previous Action stated that it was prima facia obvious to combine two or more ingredients, each of which is taught by the prior art as being useful for the same purpose to form a third composition useful for the same purpose. The results obtained were deemed to be additive. The Previous Action also stated that it was obvious to optimize ingredient amount, add the claimed additional ingredients, and formulate the composition in the claimed forms. The Present Action states that the Applicant's previous argument that US '840 (the Pruett patent) does not disclose coconut water is not persuasive since the Pruett patent is considered to disclose coconut water.

The rejection of claims 1 to 9 and 11 to 15 under 35 U.S.C. 103(a) over US '308 (the D'Jang patent), JP '729, US '840 (the Pruett patent), and JP '498 is not well taken. Independent claim 1 requires the presence of coconut water. None of the cited

references, including the Pruett patent, disclose or suggest coconut water. Thus, the combination of the teachings of the cited references does not yield or suggest the claimed invention. With respect to the relevancy of the Pruett patent, the disclosure of the Lore Application was demonstrated to be incorrect as discussed above.

The rejection of claims 31 to 46 under 35 U.S.C. 103(a) as being obvious in view of US '308 (the D'Jang patent), JP '729, US '840 (the Pruett patent), and JP '498 for the reasons set forth in the Previous Action is not well taken. Claims 31 to 46 were not even considered in the Previous Action because they were entered in the response thereto. In other words, claims 31 to 46 were entered in the Amendment of November 6, 2003, which was filed in response to and after the Office Action of May 6, 2003 (the Previous Action). Thus, any reasons set forth in the Previous Action would be inapplicable or, at the least, would require an unreasonable degree of conjecture as their application to claims 31 to 46.

For reference sake, statements made during the Amendment of November 6, 2003 concerning claims 31 to 46 (previously presented claims) are repeated for consideration in the present Amendment.

Claims 31 to 35 patentably distinguish over the teachings of the D'Jang patent. Independent claim 31 requires that *Gynostemma* be present from about 0.0001 wt% to about 5 wt%. In contrast, the D'Jang patent discloses that *Gynostemma* is present in the disclosed composition from about 10 wt% to about 30 wt%, substantially more than the claimed 0.0001 wt% to about 5 wt%

concentration range. Dependent claims 32 to 34 further distinguish the teachings of the D'Jang patent by setting forth additional concentration ranges. The efficacy of *Gynostemma* in the about 0.0001 wt% to about 5 wt% concentration range was demonstrated in Example 3 and visually represented in Figure 3. Test data indicated that *Gynostemma* at 0.001 wt% and 0.01 wt% concentrations resulted in significantly increased ATP production compared to control cultures. Thus, the claimed invention is novel and nonobvious in view of the D'Jang patent.

Claims 36 to 41 patentably distinguish over JP '498. Independent claim 36 requires the combination of *Azadirachta* and either *Gynostemma* or *Rhodiola*. JP '498 does not disclose or suggest either of the possible combinations. Claims 37 to 40 further distinguish over JP '498 in that they require *Azadirachta* to be present in certain concentration ranges.

Claims 42 to 46 patentably distinguish over JP '498 and the D'Jang patent. Independent claim 36 requires the combination of *Azadirachta* and either *Gynostemma* and *Rhodiola*. Neither JP '498 nor the Pruett patent disclose or suggest the combination. Claims 43 to 46 further distinguish over JP '498 in that they require that the combination be present in certain ranges.

Claims 1 and 10 have been rejected under 35 U.S.C. 103(a) as being obvious in view of US '308 (the D'Jang patent), JP '729, US '840 (the Pruett patent), and JP '498 for the reasons set forth in the Previous Action. The Present Action states that the Applicant's previous arguments that US '840 (the Pruett patent)

does not disclose coconut water were not persuasive since the Pruett patent is considered to disclose coconut water.

The rejection of claims 1 and 10 under 35 U.S.C. 103(a) as being obvious in view of US '308 (the D'Jang patent), JP '729, US '840 (the Pruett patent), and JP '498 is not well taken. Independent claim 1 requires the presence of coconut water. None of the cited references, including the Pruett patent, disclose or suggest coconut water. Thus, the combination of the teachings of the cited references does not disclose or suggest the claimed invention. With respect to the relevancy of the Pruett patent, the disclosure of the Lore Application was demonstrated to be incorrect as discussed above.

Reconsideration of claims 1 to 15 and 31 to 46 is deemed warranted in view of the foregoing. Allowance of these claims is earnestly solicited.

Respectfully submitted,

Dated: July 13, 2004

Charles N. J. Ruggiero
Reg. No. 28,468
Attorney for Applicants
Ohlandt, Greeley, Ruggiero
& Perle, L.L.P.
One Landmark Square
Stamford, CT 06901-2682
Tel: 203-327-4500